

**City of Brevard Report  
of City Ordinances which Carry Criminal Penalties**

**October 31, 2019**

This Report is compiled and submitted pursuant to S.L. 2019-198. It is hereby submitted to the Joint Legislative Administrative Oversight Committee (the "Committee").

As the Committee undoubtedly knows, G.S. Section 14-4(a) makes any violation of a municipal ordinance a Class 3 misdemeanor. In the City of Brevard's Ordinance, Section 1-8(a)(1) makes the same statement, referencing the statute but creating a maximum fine of \$500.00 (except for parking violations, where the maximum fine is \$50.00) and stating that each day of a continuing violation is deemed to be a separate violation. This Ordinance goes on to provide civil remedies for violations of any Ordinance, as well.

The undersigned has been the City Attorney for the City of Brevard since 1993. During this time, the question of whether a violation should be treated as a crime has arisen several times. On each such occasion, the City Attorney's recommendation and advice to the City has been that no City Agency or Department other than the Police Department should ever treat a violation as a crime. This advice having been followed, it is fair to say that it is the unwritten policy of the City of Brevard to enforce its Ordinances using civil remedies only, except when the Police Department makes the independent determination that a violation is a crime.

With this in mind, the undersigned obtained the direction of the Police Department as to which of the City of Brevard's Ordinances should be enforced through criminal proceedings. Those Ordinances that the Police Department or the undersigned have determined should be enforceable through criminal proceedings at the direction of the Police Department, are listed in the Table (Exhibit A).

Since the statute applies to all of the City of Brevard's Ordinances, you are referred to the City's website for a complete copy of the City Code of Ordinances.

City of Brevard Code of Ordinances on the web:  
<https://www.cityofbrevard.com › Code-of-Ordinances>

This reference is made with the knowledge and understanding that only the Ordinances listed in Exhibit A have been or are likely to be enforced by the City of Brevard through criminal proceedings, and that the decision to do so is properly in the hands of the City's capable Police force.

However, as you know, criminal enforcement is sometimes out of the control of the City or its Police Department. Two instances in which this situation can arise are (1) when a person appears before a Magistrate and asks that a warrant based on a misdemeanor violation of an Ordinance be issued, and (2) when a governmental agency not under the control of the City determines that an ordinance should be criminally enforced. Any ordinances which appear to the undersigned as likely for criminal enforcement under either of these circumstances appear in Exhibit A.

Submitted this the 31<sup>st</sup> day of October, 2019.

CITY OF BREVARD

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## EXHIBIT A

### CITY OF BREVARD ORDINANCES ENFORCED THROUGH CRIMINAL PROCEEDINGS

Ordinance Section	Ordinance Name	Summary of Conduct Subject to Criminal Punishment
14-3	Shooting, hunting or injuring birds	[Note: If the Ordinance Name is a summary of the conduct it is not repeated in this column]
14-5	Keeping wild animals or dangerous insects	
14-10	City designated squirrel sanctuary	Killing the Brevard White Squirrel
14-32	Cruelty to animals	
14-36	Control of dangerous dogs	Failure to take appropriate precautions to protect others from a dangerous dog
14-39	Luring, seizing, molesting or teasing animal	
14-47	Failure to surrender animal for confinement or destruction	- when ordered to do so by the County Health Director
14-61	Keeping nondomestic animals or dangerous animals	Keeping animals which could endanger persons or property
14-63	Abandonment of dog or cat	
14-65	Interference with enforcement officers	

26-34	Prohibited acts during existence of curfew	Travel other than in an emergency; sell or transfer firearms or dangerous devices; sell or consume alcohol off of one's premises; sell petroleum products except as allowed by the terms of the curfew
30-2	Burning trash or other material on street or sidewalk	
30-3	Open burning	Building a fire without a permit
30-4	Deposit of ashes liable to spontaneous combustion	Depositing embers or hot ashes in inappropriate places
30-5	Storage of ammonium nitrate	
30-6	False fire alarms	Maliciously turning in a false fire alarm
30-7	Obstructing fire hydrant	
38-2	Obstructing law enforcement officers	
38-42	Unlawful deposit of human waste	
38-48	Abandoned refrigerators and other airtight containers	
38-71, 72	Noise Ordinances	Misusing auto horns and other loud devices so as to disturb persons or affect health; playing any electronic device loudly between 10 PM and 7 AM so as to disturb others
42-2	Unauthorized use of police or fire signals	
42-3	Consumption of alcohol in public place	

42-5	Trespass	[Note: The police do not use this Ordinance, but instead charge under the State's criminal trespass statute]
42-6	Loitering for purposes of engaging in illegal drug activity	
42-7	Assemblage obstructing street	
42-8	Refusal to pay taxi fare	- with intent to defraud
42-9	Damaging fire hydrant, traffic signal or police or fire alarm	
42-10	Damaging bridge, culvert or obstructing drain	
42-11	Damaging street lights or signs	
42-12	Interfering with students	- on their way to or from school, church or other place they have a right to be
42-13	Shooting firearms	
42-14	Carrying concealed weapon on City property	
42-15	Firing projectiles or arrows	- except archery in areas approved by City Council
42-41, 42	Obscene Materials and Display of sexually explicit materials	
42-72	Prohibited conduct	Disseminate obscene materials, participate in any obscene performance, engage in commerce with obscene materials, provide nudity or partial nudity to patrons

46-1(d)	Selling from streets and vehicles	- except with appropriate permit
46-2	Crying out or using noise maker device for advertising	
46-3	Permit for house to house peddlers	
46-4, 5	Begging in public places prohibited	
62-1	Placing objects in streets or sidewalks	- so as to block traffic or endanger the public
62-5	Damaging streets or sidewalks	
62-143	Regulated uses	Motorized vehicles, horses and smoking on pedestrian and bicycle pathways are prohibited
62-144	Applicability of traffic regulations	Bicycles are considered vehicles subject to Chapter 20 of the General Statutes
66-1	Adoption of state law	Chapter 20 of the General Statutes is applied to the City's streets
66-6	Carts, bicycles or other vehicles blocking sidewalks and driveways	
66-9	Boarding or alighting from vehicle in motion	
66-10	Unlawful riding	Riding on a vehicle not designed or intended for passengers
66-11	Entering, jumping on or riding vehicles without permission	
66-12	Hanging onto vehicle	

66-13	Special Events	Public gatherings that block streets or pedestrian walkways are allowed only with permits
66-41 - 110	Official Traffic Control Devices and Operation of Vehicles	[Note: These Ordinances duplicate state laws found in Chapter 20 of the General Statutes. The police charge from the General Statutes, and not from these Ordinances]
66-114	Obstructing passage of other vehicles	
70-37	Water meters	A separate water meter is required for every point of delivery of water from the City
70-47	Turning on water without authority	
70-48	Unauthorized use of water	
70-50	Trespassing on or injuring or polluting water shed	
70-51	Damaging or tampering with water or sewer facilities	
70-91, 92, 93	Prohibited, Restricted discharges, Limitations on discharges	Discharging anything but sewerage into the sanitary sewer system; discharging a greater volume of waste into the sanitary sewer system than it can handle
70-127 - 137	Water Shortage Response Plan	Violating the terms of an emergency water shortage response plan
70-140 - 175	Sewer Use	Reference to G. S. Section 143-215.6B is made with regard to criminal violations

3.5	Adult Establishments require special use permit	[Note: All Ordinance Section references from this point forward are references to the Unified Development Ordinance]
3.6	Kennels require special use permit	
3.25, 26	Firing ranges require special use permit	